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Attorneys for Defendant: Otto Trucking LLC

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

Waymo LLC,

Plaintiff,

v.

Uber Technologies, Inc.; Ottomotto LLC; Otto
Trucking LLC,

Defendants.

Case No. 3:17-cv-00939-WHA

**DECLARATION OF HONG-AN VU IN
SUPPORT OF DEFENDANTS'
OPPOSITION TO WAYMO'S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

Date: September 20, 2017
Time: 8:00 a.m.
Courtroom: 8
Judge: Hon. William Alsup

DECLARATION OF HONG-AN VU

I, Hong-An Vu, declare as follows:

1. I am an associate at the law firm of Goodwin Procter, LLP, representing defendant Otto Trucking LLC (“Otto Trucking”) in this matter. I am a member in good standing of the State Bar of California. I make this declaration in support of Defendants’ Opposition to Waymo’s Motion for Partial Summary Judgment. Unless otherwise stated, I make this declaration based upon matters within my own personal knowledge and if called as a witness, I could and would competently testify to the matters set forth herein.

2. Attached hereto as Exhibit 1 is a true and correct copy of excerpts from the August 16, 2017 hearing transcript in the above-captioned matter.

3. Attached hereto as Exhibit 2 is a true and correct copy of WAYMO-UBER-00086885.

4. Attached hereto as Exhibit 3 is a true and correct copy of WAYMO-UBER-00086893.

5. Attached hereto as Exhibit 4 is a true and correct copy of WAYMO-UBER-00086932.

6. Attached hereto as Exhibit 5 is a true and correct copy of Waymo’s initial disclosures served on April 3, 2017.

7. Attached hereto as Exhibit 6 is a true and correct copy of Waymo’s supplemental initial disclosures served on June 21, 2017.

8. Attached hereto as Exhibit 7 is a true and correct copy of Waymo’s corrected initial disclosures served on June 22, 2017.

9. Attached hereto as Exhibit 8 is a true and correct copy of WAYMO-UBER-00011805.

10. Attached hereto as Exhibit 9 is a true and correct copy of WAYMO-UBER-00086809.

11. Attached hereto as Exhibit 10 is a true and correct copy of WAYMO-UBER-00086907.

- 1 12. Attached hereto as Exhibit 11 is a true and correct copy of WAYMO-UBER-
2 00086800.
- 3 13. Attached hereto as Exhibit 12 is a true and correct copy of WAYMO-UBER-
4 00086812.
- 5 14. Attached hereto as Exhibit 13 is a true and correct copy of WAYMO-UBER-
6 00084600.
- 7 15. Attached hereto as Exhibit 14 is a true and correct copy of WAYMO-UBER-
8 83662.
- 9 16. Attached hereto as Exhibit 15 is a true and correct copy of WAYMO-UBER-
10 00035458.
- 11 17. Attached hereto as Exhibit 16 is a true and correct copy of WAYMO-UBER-
12 00086817.
- 13 18. Attached hereto as Exhibit 17 is a true and correct copy of WAYMO-UBER-
14 00084551.
- 15 19. Attached hereto as Exhibit 18 is a true and correct copy of WAYMO-UBER-
16 00084575.
- 17 20. Attached hereto as Exhibit 19 is a true and correct copy of the Declaration of
18 Michael Janosko, dated March 9, 2017.
- 19 21. Attached hereto as Exhibit 20 are excerpts from the deposition of Chelsea Bailey
20 dated August 1, 2017.
- 21 22. Attached hereto as Exhibit 21 are excerpts from the deposition of Chris Urmson,
22 dated August 24, 2017.
- 23 23. Attached hereto as Exhibit 22 are excerpts from the deposition of Kristinn
24 Gudjonsson, dated July 28, 2017.
- 25 24. Attached hereto as Exhibit 23 are excerpts from the deposition of Kristinn
26 Gudjonsson, dated September 8, 2017.
- 27
- 28

1 25. Attached hereto as Exhibit 24 are excerpts from the deposition of Michael Janosko,
2 dated August 25, 2017 based on the local date and time in Sydney, Australia, August 24, 2017
3 based on Los Angeles local date and time.

4 26. Attached hereto as Exhibit 25 are excerpts from the deposition of Alexander Sasha
5 Zbrozek, dated September 6, 2017.

6 27. Attached hereto as Exhibit 26 are excerpts from the deposition of Gary Brown
7 dated March 24, 2017.

8 28. Attached hereto as Exhibit 27 are excerpts from the deposition of Gary Brown
9 dated August 8, 2017.

10 29. Attached hereto as Exhibit 28 are excerpts from the expert report of Erik Laykin
11 dated September 7, 2017.

12 30. I participated in several meet and confer calls regarding Waymo's proposed
13 custodians once Waymo decided to include Otto Trucking in meet and confer discussions on this
14 issue. Sasha Zbrozek, Nick Vines, and Tom Gorman are not custodians whose documents Waymo
15 search and I am not aware if they were ever discussed as custodians as none of these individuals
16 appears on Waymo's initial disclosures.

17 31. Otto Trucking submitted its opposition to Waymo's precis before noon on August
18 24, 2017. At that time, Otto Trucking had not yet received the documents referenced in this
19 declaration relating to Waymo's investigation of Mr. Levandowski because Waymo had withheld
20 them as privileged.

21 32. After the Court granted Otto Trucking's privilege waiver motion to compel,
22 Waymo produced additional documents subject to that waiver on August 24, 2017 at 8:54 p.m.,
23 just over three hours before the fact discovery cutoff. The production related to the privilege
24 waiver included approximately eighty documents, with twenty-nine of them including redactions.

25 33. In total, on August 24, 2017, the last day of discovery, Waymo produced over
26 7,200 documents, about one third of its total production up to that date.

1 34. Waymo has continued to withhold information relating to its investigation of Mr.
2 Levandowski on the basis of privilege by redacting portions of the documents produced on August
3 24 and withholding others entirely.

4 35. On August 28, 2017, Otto Trucking appeared again before Judge Corley and, based
5 on a review of the transcript, discussed, among other issues, Waymo's production of documents
6 subject to the privilege waiver. According to the transcript, Judge Corley determined that the
7 redactions were too extensive and ordered Waymo to act in "favor of disclosure rather than
8 nondisclosure." Judge Corley also ordered the depositions of Google employees Gary Brown,
9 Kristinn Gudjonsson and Sasha Zbrozek.

10 36. On August 30, 2017, after Waymo had not removed redactions or produced
11 additional documents, Otto Trucking appeared again before Judge Corley and, based on a review
12 of the transcript, Waymo was ordered to appear in court the next day with the redacted documents
13 and its privilege logs for the Court's review.

14 37. On August 31, 2017, Otto Trucking appeared again for a hearing before Judge
15 Corley, during which she reviewed Waymo's redactions and privilege logs and ordered numerous
16 additional documents to be produced, almost entirely without redactions.

17 38. On September 1, 2017, the day after Judge Corley reviewed documents regarding
18 Waymo's investigation identified on its privilege logs in camera, Waymo produced a privilege log
19 containing more than 1,300 privileged documents not previously disclosed. Prior to this,
20 Waymo's privilege logs contained a total of 288 documents.

21 39. Based upon a review of the transcript, at the hearing, Waymo did not disclose to
22 Otto Trucking or to Judge Corley at the August 31 hearing that a privilege log containing
23 additional documents relating to its investigation was being prepared for production, even though
24 Waymos' assertion of privilege was the primary topic at the hearing.

25 40. On September 2, 2017, Waymo produced new documents and mostly undredacted
26 versions of documents it had originally withheld as privileged, re-produced in redacted form, and
27 then produced again with no redactions or fewer redactions pursuant to Judge Corley's order.
28 Included in that production were Exhibits 2-4.

41. On information and belief, on September 6, 2017, during the deposition of Gary Brown, the parties held a conference before Judge Corley due to Waymo's instructions to Mr. Brown not to answer certain questions on the grounds of privilege. On information and belief, Judge Corley ordered the questions answered due to the privilege waiver.

42. After Otto Trucking met and conferred about additional documents on this privilege log, on September 8, Waymo produced two additional documents.

43. Each time Otto Trucking has sought Judge Corley's intervention regarding documents or testimony relating to Waymo's investigation that were being withheld by Waymo, Otto Trucking received additional documents, testimony or information containing additional important information that weakened Waymo's claims.

44. Otto Trucking continues to meet and confer with Waymo regarding its compliance with Judge Corley's orders requiring it to produce documents over which it waived privilege. Since discovery closed on August 24, 2017, Waymo has produced over 1,600 additional documents.

45. Attached hereto as Exhibit 29 is an email and its attachment, UBER00077201-02.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 12th day of September, 2017 in Los Angeles, California.

/s/ Hong-An Vu
Hong-An Vu

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document including all of its attachments with the Clerk of the Court for the United States District Court for the Northern District of California by using the CM/ECF system on **September 12, 2017**. I further certify that all participants in the case are registered CM/ECF users and that service of the publicly filed documents will be accomplished by the CM/ECF system.

I certify under penalty of perjury that the foregoing is true and correct. Executed on **September 12, 2017**.

/s/ Neel Chatterjee
NEEL CHATTERJEE

ATTORNEY ATTESTATION

Pursuant to Civil Local Rule 5-1(i)(3), I, Neel Chatterjee, hereby attest that concurrence in the filing of this document has been obtained from any signatories indicated by a “conformed” signatures (/s/) within this e-filed document.

Dated: September 12, 2017

/s/ Neel Chatterjee